TORTS—INDUCING BREACH OF CONTRACT—JUSTIFICATION.—Where representatives of a labor union, for the purpose of securing steady employment for union men, knowing of the existence of a contract between the plaintiff and a manufacturer, induced the latter to break that contract, to the damage of the plaintiff, they were *held* liable for the resulting damage. *R. & W. Hat Shop v. Sculley* (Conn., 1922), 118 Atl. 55.

The principal case is in accord with the doctrine generally prevailing in England and America that it is an actionable wrong knowingly to induce a breach of contract without sufficient justification or excuse. *Lumley v. Gye*, 2 El. & B. 216; *Bowen v. Hall*, 6 Q. B. D. 333; *Quinn v. Leathem* (1901), App. Cas. 495. See ANN. CAS. 1916 E, 608, for collection of American authorities. Although this doctrine was only applied to cases involving contracts for personal service in the earlier decisions, modern courts have extended its application to contracts of all classes. *Wheeler-Stenzel Co. v. American Window Glass Co.*, 202 Mass. 471; *Kock v. Burgess*, 167 Ia. 727; *Bowen v. Speer* (Tex.), 166 S. W. 1183; *Jones v. Stanly*, 76 N. C. 355. A few jurisdictions, however, still restrict the doctrine to contracts for personal service. *Chambers & Marshall v. Baldwin*, 91 Ky. 121, 34 A. S. R. 165, 11 L. R. A. 545; *Glencoe Land and Gravel Co. v. Hudson Bros. Commission Co.*, 138 Mo. 439, 60 A. S. R. 560, 36 L. R. A. 804. The law is unsettled as to what constitutes sufficient justification or excuse for inducing a breach of contract. POLLOCK ON TORTS, Ed. 11, p. 346. In the principal case the promotion of self-interest and the absence of ill will toward the injured person were relied upon as a defense. It is well settled that the mere absence of ill will toward the injured party is no defense, *Tubular Rivet and Stud Co. v. Exeter Boot and Shoe Co.*, 159 Fed. 824, while pecuniary gain, whether in trade competition, *Cumberland Glass Mfg. Co. v. DeWitt*, 120 Md. 381, Ann. Cas. 1915 A. 702; *Beekman v. Marsters*, 195 Mass. 205, or in a conflict between employer and employee, *George Jonas Glass Co. v. Glass Bottle Blowers' Assn.*, 77 N. J. Eq. 219, is not sufficient justification to gain immunity for one who knowingly induces the breach of a contract. See BIGELOW ON TORTS, Ed. 8, Chapter 7, and 4 IOWA L. BUL. 210.

TORTS—MALICIOUS PROSECUTION—FUNCTIONS OF COURT AND JURY IN DETERMINING PROBABLE CAUSE.—In a recent New York case of malicious prosecution the court *held*, that when the facts are disputed, or, though undisputed, are susceptible of conflicting inferences as to probable cause, that question is one of fact for the jury. *Halsey v. New York Society for Suppression of Vice* (N. Y., 1922), 136 N. E. 219.

The general rule of the common law sustained by the overwhelming weight of authority both in England and America is that what facts, and whether particular facts, constitute probable cause, is always a question for the court, which it is error for him to submit to the decision of the jury. *Panton v. Williams*, 2 Q. B. 169; *Michael v. Matson*, 81 Kan. 360, L. R. A. 1915D, 1, and note; NEWELL, MAL. PROS. 276 *et seq.* While the general rule appears to have been altered by the principal case, many other cases in New York, however, sustain the result of the principal case. *Heyne v. Blair*,

62 N. Y. 19; *Burns v. Wilkinson,* 228 N. Y. 113; *Hazzard v. Flury,* 120 N. Y. 223. Naturally and logically, probable cause would seem to be a question of fact for the jury to decide. *Burton v. St. Paul, etc., Ry.,* 33 Minn. 189, 192; *Lister v. Perryman,* L. R. 4 H. L. 521, 538. See also 25 YALE L. J. 328. But from an early date the question was reserved by the court to itself. Considerations of public policy, in view of the importance of not discouraging criminal prosecutions or private suits in good faith and with honest purpose have led to the establishment and maintenance of the rule. *Hess v. Oregon Baking Co.,* 31 Ore. 503; *Ball v. Rawles,* 93 Cal. 222. While this rule has received expression and recognition in most all jurisdictions, there has been considerable conflict or confusion in its application. The difficulty in the practical application of the rule seems to arise when the facts are in dispute, for the prevailing practice in most jurisdictions is to submit the question of probable cause to the jury with instructions as to what facts do or do not amount to probable cause. *Erb v. German American Ins. Co.,* 112 Iowa 357; *Hamilton v. Smith,* 39 Mich. 222. In England many courts have so framed questions of fact as practically to leave the whole matter in their hands. *Abrath v. N. East. Ry. Co.,* 11 App. Cas. 247; STEPHENS, MAL. PROS., p. 57. In a few states the instructions have taken the form of definitions of probable cause, leaving the question whether it existed or not to the jury. *Landa v. Obert,* 45 Texas 539; *Ash v. Marlow,* 20 Ohio 119; *Cole v. Curtis,* 16 Minn. 182. How easy it is to slip, while not meaning an immediate departure from the usual doctrine, is shown in a late case in Indiana. *Treloar v. Harris,* 65 Ind. App. 22. The court there realized how extremely difficult it would be to group together all the facts that would constitute probable cause; the charge given was similar to the one given in an ordinary negligence case, leaving everything to the jury except the ultimate question of probable cause. This seems to be the tendency of courts in general, and many of the late decisions go so far as to say that when there is any dispute in the evidence probable cause is a question for the jury. *Kelsea v. Swett,* 234 Mass. 79; *Pickles v. Anton* (N. D., 1922), 189 N. W. 684; *Slaughter v. Nolan,* 41 S. D. 134; *Froemke v. Massman,* 215 Ill. App. 86.